

FILED

APR 15 2021

DEPARTMENT OF REAL ESTATE
By *By dew*

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-12494 SF
12 ISMART REALTY & INVESTMENTS INC)	
13 and PHONG THAI HUYNH,)	<u>ACCUSATION</u>
14 Respondents.)	

15 The Complainant, STEPHANIE YEE, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of Accusation against
17 Respondents ISMART REALTY & INVESTMENTS INC (iSRII) and PHONG THAI HUYNH
18 (HUYNH), sometimes collectively referred to as Respondents, is informed and alleges as
19 follows:

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21 Respondents are presently licensed and/or have license rights under the Real
22 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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24 At all times mentioned, iSRII was and is licensed by the State of California
25 Department of Real Estate (Department) as a real estate broker corporation.

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At all times mentioned herein, HUYNH was and is licensed by the Department individually as a real estate broker, and as the designated broker officer of iSRII. As the designated broker officer, HUYNH was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of iSRII for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and Regulations.

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Whenever reference is made to an allegation in this Accusation to an act or omission of iSRII, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with iSRII committed such acts or omissions while engaged in furtherance of the business or operation of iSRII and while acting within the course and scope of their corporate authority and employment.

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At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rents from real property, or improvements thereon, or from business opportunities.

FIRST CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 5, inclusive, is incorporated by this reference as if fully set forth herein.

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On or about January 21, 2020, and continuing intermittently through January 23, 2020, an audit was conducted of the records of iSRII. The auditor examined records for the period of January 1, 2018, through December 31, 2019 (the audit period).

While acting as real estate brokers, as described in Paragraph 5, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents, at Bank of America, 1058 E. Brokaw Road, San Jose, California 95131, including but not limited to the following:

BANK ACCOUNT #1	
Account No.:	XXXXXXXXX5119
Entitled:	ISMART REALTY & INVESTMENTS, INC DBA GO PROPERTYHOP
BANK ACCOUNT #2	
Account No.:	XXXXXXXXX4297
Entitled:	ISMART REALTY & INVESTMENTS INC. DBA GO PROPERTYHOP

and thereafter from time-to-time made disbursement of said trust funds.

In the course of the activities described in Paragraph 5, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) Respondents failed to designate Bank Account #1 as a trust account as required by Section 10145 of the Code and Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);
- (b) An accountability was performed on Bank Account #1, and as of December

1 31, 2019, there was a shortage in the amount of \$74,902.05 revealed, in
2 violation of Section 10145 of the Code;

3 (c) Respondents failed to obtain written permission from owners of trust funds to
4 allow the balances to drop below accountability, in violation of Section 2832.1
5 of the Regulations;

6 (d) Respondent allowed an unlicensed person to be a signatory on Bank Account
7 #1 without an adequate fidelity bond, in violation of Section 10145 of the
8 Code and Section 2834 of the Regulations;

9 (e) Respondent failed to maintain an accurate separate record of the receipt and
10 disposition of all trust funds deposited into Bank Account #1, in violation of
11 Section 10145 (g) of the Code and Section 2831.1 of the Regulations; and

12 (f) Respondents failed to perform and/or maintain records of monthly
13 reconciliations, reconciling the balance of all separate beneficiary or
14 transaction records with the balance of the record of all trust funds received
15 and disbursed for Bank Account #1, in violation of Section 2831.2 of the
16 Regulations.

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18 The acts and/or omissions described above constitute violations of Sections
19 2831.1 (Separate Records), 2831.2 (Trust Account Reconciliation), 2832 (Bank Account Not
20 Properly Designated as Trust Account), 2832.1 (Written Permission for Balance Below
21 Accountability), and 2834 (Trust Fund Signatory) of the Regulations and of Section 10145
22 (Trust Fund Handling) of the Code, and are grounds for discipline under Sections 10177 (d)
23 (Willful Disregard of Real Estate Laws) and/or 10177 (g) (Negligence/Incompetence Licensee)
24 of the Code.

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1 violation of this part to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the
4 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
5 disciplinary action against all licenses and license rights of Respondents under the Real Estate
6 Law, for the cost of the investigation and enforcement as permitted by law, for the cost of the
7 audit as permitted by law, and for such other and further relief as may be proper under other
8 provisions of law.

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STEPHANIE YEE
11 Supervising Special Investigator

12 Dated at Oakland, California,
13 this 11th day of February, 2021.

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15 DISCOVERY DEMAND

16 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
17 Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set
18 forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of
19 Real Estate may result in the exclusion of witnesses and documents at the hearing or other
20 sanctions that the Office of Administrative Hearings deems appropriate.

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